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Attorneys for Plaintiff Federal Trade Commission

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORP.

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-2880

**PLAINTIFF FEDERAL TRADE
COMMISSION'S ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
ANOTHER PARTY'S MATERIAL
SHOULD BE SEALED**

Pursuant to Civil Local Rules 7-11 and 79-5(f), Plaintiff, the Federal Trade Commission, respectfully submits this Administrative Motion to Consider Whether Another Party's Material Should be Sealed in connection with Plaintiff's Emergency Motion for a Temporary Restraining Order (attached hereto, "Plaintiff's Emergency Motion") and documents filed in support of.

Certain portions of Plaintiff's Emergency Motion contain information obtained from Defendants' Microsoft Corporation ("Microsoft"), Activision Blizzard, Inc. ("Activision"), and NVIDIA Corporation ("Nvidia"), and Sony Interactive Entertainment ("Sony") during the course of the FTC's investigation regarding Microsoft's proposed acquisition of Activision. Microsoft, Activision, Nvidia, and SIE designated certain of this information as confidential pursuant to Section 21 of the FTC Act, 15 U.S.C. § 57b-2. Other portions of Plaintiff's Emergency Motion contain information that was obtained during the course of litigation discovery in In the matter of Microsoft Corp. and Activision, Blizzard, Inc., before the United States of America Federal Trade Commission Office of Administrative Law Judges, Docket No. 9412, and that the producing party designated as Confidential pursuant to the Protective Order Governing Confidential Material entered on December 9, 2022 ("Administrative Protective Order"). Accordingly, Plaintiff seeks to file under seal:

Document	Portions to Be Filed Under Seal	Designating Party
Plaintiff's Emergency Motion	Page i, Portions of Lines 14-15	Microsoft and Activision
Plaintiff's Emergency Motion	Page i, Portions of Lines 17-18	Microsoft and Activision
Plaintiff's Emergency Motion	Page 1, Portions of Line 2	Microsoft and Activision

Plaintiff's Emergency Motion	Page 1, Portions of Lines 11-13	Microsoft and Activision
Plaintiff's Emergency Motion	Page 3, Portions of Lines 15-16	Microsoft and Activision
Plaintiff's Emergency Motion	Page 3, Portion of Line 27, Page 4, Portion of line 1	Microsoft and Activision
Plaintiff's Emergency Motion	Page 6, Portions of Lines 7-23, Page 7, Portions of Lines 1-2	Microsoft and Activision
Plaintiff's Emergency Motion	Page 7, Portions of Lines 5-8	Microsoft and Activision
Plaintiff's Emergency Motion	Page 8, Portion of Line 24	Microsoft and Activision
Plaintiff's Emergency Motion	Page 15, Portions of Lines 6-13	Microsoft
Plaintiff's Emergency Motion	Page 16, Portions of Lines 8-10	Microsoft and Activision
Plaintiff's Emergency Motion	Page 17, Portions of Lines 2-4, 6-7	Microsoft and Activision
Plaintiff's Emergency Motion	Page 17, Portions of Lines 14-19	Microsoft and Activision
Plaintiff's Emergency Motion	Page 18, Portions of Lines 4-8, 17, 19-21	Microsoft and Activision
Plaintiff's Emergency Motion	Page 18, Portions of Lines 15-16, 22-23	Nvidia

Plaintiff's Emergency Motion	Page 18, Portion of Line 27, Page 19, Portion of Line 1	Microsoft and Activision
Plaintiff's Emergency Motion	Page 19, Portions of Lines 11-13, 17-19	Microsoft and Activision
Plaintiff's Emergency Motion	Page 20, Portions of Lines 4-5, 7-9	Microsoft and Activision
Plaintiff's Emergency Motion	Page 20, Portion of Line 9	Sony
Plaintiff's Emergency Motion	Page 21, Portions of Lines 24-25, Page 22, Portion of Line 1	Microsoft
Plaintiff's Emergency Motion	Page 22, Portions of Lines 17, 19-25	Activision
Plaintiff's Emergency Motion	Page 23, Portions of Lines 6-11, 14-16	Microsoft and Activision
Plaintiff's Emergency Motion	Page 23, Portions of Lines 17-20	Sony
Plaintiff's Emergency Motion	Page 23, Portions of Lines 25-27	Microsoft
Plaintiff's Emergency Motion	Page 24, Portions of Lines 1-4, 5-12	Microsoft and Activision
Plaintiff's Emergency Motion	Page 24, Portions of Lines 20-23, 26-27	Microsoft and Activision
Plaintiff's Emergency Motion	Page 25, Portions of Lines 1-4, 12-14	Microsoft and Activision
Plaintiff's Emergency Motion	Page 25, Portions of Lines 20-26	Microsoft

1	Plaintiff's Emergency Motion	Page 25, Portion of Line 27, Page	Microsoft
2		26, Portions of Lines 1-5	
3	Plaintiff's Emergency Motion	Page 26, Portion of Lines 12-17	Microsoft
4	Declaration of Jennifer Fleury	Page 1, Portions of Lines 15 and	Nvidia
5	in Support of Plaintiff Federal	16	
6	Trade Commission's		
7	Emergency Motion for a		
8	Temporary Restraining Order		
9	("Fleury Declaration")		
10			
11	Fleury Declaration	Page 1, Portions of Lines 10-12	Microsoft
12	Fleury Declaration	Page 2, Portions of Lines 9-10	Microsoft
13	Fleury Declaration	Page 2, Portions of Lines 17-21	Nvidia
14	Fleury Declaration	Page 2, Portions of Lines 23-27	Activision
15	Fleury Declaration	Page 3, Portions of Lines 2-4, 10-	Sony
16		11	
17	Fleury Declaration	Page 3, Portions of Lines 6-9	Microsoft
18	Fleury Declaration	Page 4, Portion of Line 11	Microsoft
19	Exhibit A	Entire Document	Microsoft
20	Exhibit B	Entire Document	Microsoft
21	Exhibit C:	Entire Document	Microsoft and
22			Activision ¹
23			
24			
25			

¹ The Lee Report contains non-party confidential information as well. While not all Lee Report quotes reveals information from documents designated by Microsoft, Activision, Nvidia, or Sony (Continued...)

Expert Report of Robin S. Lee, Ph.D. (“Lee Report”)		
Exhibit I	Entire Document	Microsoft and Activision
Exhibit J	Entire Document	Microsoft
Exhibit K	Entire Document	Microsoft
Exhibit M	Entire Document	Nvidia
Exhibit N	Entire Document	Nvidia
Exhibit O	Entire Document	Activision
Exhibit P	Entire Document	Activision
Exhibit Q	Entire Document	Sony
Exhibit R	Entire Document	Microsoft
Exhibit S	Entire Document	Microsoft
Exhibit T	Entire Document	Sony
Exhibit U	Entire Document	Microsoft
Exhibit V	Entire Document	Microsoft
Exhibit Y	Entire Document	Microsoft
Exhibit Z	Entire Document	Microsoft and Activision
Exhibit AA	Entire Document	Microsoft
Exhibit AB	Entire Document	Microsoft

as confidential, these designated materials are so intertwined with Dr. Lee’s analysis as to make redaction by the FTC impracticable.

Exhibit AC	Entire Document	Microsoft
Exhibit AD	Entire Document	Microsoft

Materials and documents may be provisionally filed under seal pursuant to Civil Local Rule 79-5(f) when the document, or portions thereof, “has been designated as confidential by another party or non-party.” L.R. 79-5(f). Plaintiff has redacted the above-referenced yellow-highlighted portions of its Emergency Motion and documents filed in support thereof because Microsoft or Activision has designated the information contained therein as confidential pursuant to Section 21 of the FTC Act, 15 U.S.C. § 57b-2, and/or as Confidential pursuant to the Administrative Proceeding Protective Order. Plaintiff has redacted the above-referenced green-highlighted portions of its Emergency Motion and documents filed in support thereof because Nvidia has designated information contained therein as confidential pursuant to Section 21 of the FTC Act, 15 U.S.C. § 57b-2, and/or as Confidential pursuant to the Administrative Proceeding Protective Order. Plaintiffs has redacted the above-referenced blue-highlighted portions of its Emergency Motion and documents filed in support thereof because Sony has designated information contained therein as confidential pursuant to Section 21 of the FTC Act, 15 U.S.C. § 57b-2, and/or as Confidential pursuant to the Administrative Proceeding Protective Order. Plaintiff takes no position on the merits of sealing Microsoft’s, Activision’s, and non-parties’ designated material.

In compliance with Civil Local Rule 79-5(d), redacted and unredacted versions of Plaintiff’s Emergency Motion and documents filed in support therefor accompany this Administrative Motion. In accordance with Local Rule 7-11, Plaintiff has also filed a Proposed Order herewith.

1 Dated: June 12, 2023

Respectfully Submitted,

2 /s/ James H. Weingarten

3 James H. Weingarten

4 Peggy Bayer Femenella

James Abell

Cem Akleman

5 J. Alexander Ansaldo

Michael T. Blevins

6 Amanda L. Butler

Nicole Callan

7 Maria Cirincione

Kassandra DiPietro

8 Jennifer Fleury

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9 James Gossmann

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